

Chapter 288
2009 -- S 0732 SUBSTITUTE A AS AMENDED
Enacted 11/12/09

A N A C T
RELATING TO WATERS AND NAVIGATION - THE WATER USE AND GOVERNMENT
EFFICIENCY ACT OF 2009

Introduced By: Senators Sosnowski, Bates, Walaska, and Ciccone

Date Introduced: February 26, 2009

It is enacted by the General Assembly as follows:

SECTION 1. Title 39 of the General Laws entitled "PUBLIC UTILITIES AND CARRIERS" is hereby amended by adding thereto the following chapter:

CHAPTER 15.1
WATER SUPPLIERS SUBJECT TO COMMISSION RATE REGULATION

39-15.1-1. Purposes. -- The purposes of this chapter are to:

(1) Augment current principles for setting the rates of public utilities that are water suppliers that are subject to commission rate regulation in a manner that facilitates:

(i) Managing demand, especially seasonal demand;

(ii) Investing in infrastructure repair and replacement;

(iii) Recovering the full costs, including capital and operational, of water systems through water system revenues; and

(iv) Establishing operating capital and debt service of sufficient size; and

(2) Provide an optional system for multi-year water rates that are adjustable in accordance with an approved rate plan.

39-15.1-2. Definitions. -- For the purposes of this chapter, the following definitions shall apply:

(1) "Commission" shall mean the public utilities commission established by chapter 39-1, with all powers set forth in chapter 39-1, including, but not limited to, the powers set forth in section 39-1-3 and 39-1-7, and in chapter 39-4, and subject to the provisions of chapter 39-5;

(2) "Division" shall mean the division of public utilities;

(3) "Water resources board" shall mean the water resources board having the duties set forth in chapter 46-15;

(4) "Water supplier" shall mean all water supply systems regulated by the public utilities commission, including the Kent County Water Authority, Newport Water Department, Pawtucket Water Supply Board, Providence Water Supply Board, United Water Rhode Island, Woonsocket Water Department and any future water supply system that meets the definition established in subdivision 39-1-2(20) pertaining to public utilities employed for the distribution of water to the consuming public.

(5) "Water supply systems management plan" shall mean a water supply systems management plan prepared in accordance with section 46-15.3-5.1 and found by the water resources board, pursuant to the provisions of section 46-15.3-7.6, to be in compliance with the requirements for such plans.

(6) "Agricultural" shall mean commercial agricultural producers as defined in 46-15.3-4(2).

39-15.1-3. Rates. -- (a) Adequacy. The rates of water suppliers subject to commission rate regulation shall be responsible and adequate to pay for all costs associated with water supply including, but not limited to, the costs of:

(1) Acquisition, treatment, transmission, distribution and availability of water;

(2) System administration and overhead, including the prudent cost and/or value of all services and facilities provided by the city or town to the water supplier including, but not limited to, testing, operation, maintenance, replacement, repair, debt service, and associated with, but not limited to, supply, production, treatment, transmission, administration facilities, and metering and billing;

(3) Programs for the conservation and efficient use of water, including costs of developing, implementing, enforcing and evaluating such conservation programs and including conservation pricing as described in subsection (d);

(4) Sufficient operating reserves, revenue stabilization funds, debt service reserves, and capital improvement/infrastructure replacement funds to implement water supply system management plans.

(b) Equitability. Except for service charges and other fixed fees and charges approved as reasonable by the commission, where practicable, rates:

(1) Shall be based on metered usage and fairly set among and within the classes and/or types of users;

(2) Shall provide that within any class of users the full cost of system capacity, administration, operation, and water supply costs for peak and seasonal use is borne by the users that contribute to such peak and seasonal use; and

(3) May provide a basic residential use rate for water use that is designed to make a basic level of water use affordable. Rates may require implementation of demand management practices, consistent with the standards and guidelines of the water resources board, established pursuant to subdivision 46-15.8-5(1), by wholesale and retail customers.

(c) Revenue stabilization. Water suppliers subject to commission rate regulation shall, in the absence of other sufficient funds available for similar purposes, establish as part of their next general rate filing before the commission a revenue stabilization account to ensure fiscal stability during periods when revenues decline as a result of implementing water conservation programs, or due to circumstances beyond the reasonable control of the water supplier, including, but not limited to, the weather and drought. A revenue stabilization account shall accumulate a maximum of ten percent (10%) of the annual operating expenses of the supplier and shall be used to supplement other revenues so that the supplier's reasonable costs are compensated. A supplier may draw upon its revenue stabilization account without further action of the commission if revenues in any fiscal year fall below the level sufficient to provide reasonable compensation for services rendered, subject to periodic review by the commission to ensure that the purposes of section 39-15.1-1 are fulfilled.

(d) Conservation. Water suppliers subject to commission rate regulation shall take effective action to reduce waste of water and to reduce non-agricultural seasonal increases in the use of water, and may adopt conservation pricing as part of a demand management program or otherwise revise their rates as a means to achieve their goals. For the purpose of encouraging conservation of water, suppliers are authorized to request increased rates based on quantity used either throughout the year or seasonally and to seek expedited review by the commission of such revised rates, provided that the supplier shall not have the burden of proof to link the increased rate to obtaining reasonable compensation for the service rendered as established in section 39-3-12. Conservation pricing shall be designed to promote efficient water use, and to limit seasonal non-agricultural outdoor water use, and to the extent possible shall not increase prices for water users with no significant seasonal increase in water use. Revenues generated from the adoption of conservation rates shall be used to fund the revenue stabilization account established pursuant to subsection (c) above, operating reserves, debt service reserves or capital improvement/infrastructure replacement funds.

(e) Billing. Billing shall be at a minimum quarterly by December 31, 2013.

39-15.1-4. Optional multi-year rate plans. -- (a) Water suppliers may, at their discretion, file with the commission a rate plan for a period not to exceed six (6) years, which rate plans shall set forth proposed rates:

(1) That are adequate, as described in subsection 39-15.1-3(a) of this chapter, to pay for all reasonable costs of service associated with water supply during the period of the plan, and

may include projections of cost increases, and are equitable as described in subsection 39-15.1-3(b);

(2) That attribute the cost of increased seasonal demand to customers that contribute to increased seasonal demand and that may include conservation pricing pursuant to subsection 39-15.1-3(d);

(3) That provide for infrastructure maintenance, repair, and replacement, especially in order to meet goals for reduction of leakage and the accounting of non-billed water, that are included in a water supply system management plan; and

(4) That provide for the establishment and maintenance of operating reserves, capital reserves, and debt service reserves as described in subsection 39-15.1-3(a);

(b) The commission shall approve or reasonably amend the plan and the rates proposed therein;

(c) A water supplier with a multi-year plan approved by the commission may change its rates consistent with provisions of the plan, provided that a forty-five (45) day notice is given to the commission and the division, which notice shall state the amount of the proposed rate changes, the manner in which the proposed rate is consistent with the approved plan, and the purpose of the proposed rate change. The proposed rate change shall be effective sixty (60) days after the notice to the commission and the division, unless the commission shall decide that the proposed rate increase may be unreasonable or inconsistent with the approved plan, in which case the commission shall hold a hearing on the proposed rate increase and may approve, or reasonably amend the proposed rate increase. Notwithstanding the foregoing notice provision, the commission shall be bound by the suspension period set forth in section 39-3-11.

(d) A water supplier may petition the commission for a modification to an approved plan, and the commission in hearing and deciding the petition need only consider those portions or elements of the plan affected by the proposed modification. The commission shall approve or reasonably modify the proposed modification. An approved modification shall become part of the plan for purposes of subsection (c) of this section.

(e) Each water supplier with an approved plan shall report annually to the commission and the division with regard to performance under the plan, including rates, revenues derived from rates, expenditures necessary to pay for all reasonable costs of service; and the level and status of operating reserves, capital reserves, and debt service reserves.

SECTION 2. Title 45 of the General Laws entitled "TOWNS AND CITIES" is hereby amended by adding thereto the following chapter:

CHAPTER 39.1 **MUNICIPAL WATER SUPPLIES**

45-39.1-1. Purpose. -- The purpose of this chapter are:

(1) To clarify the powers and duties of city and town councils with regard to water suppliers, and

(2) To establish municipal water supplies as enterprise funds. This chapter shall not alter, abrogate, or diminish the duties of water suppliers established elsewhere in the general or public laws or supersede or alter or abrogate powers and duties set forth in chapter 39-15.1.

45-39.1-2. Definitions. – (1) “Agricultural” shall mean commercial agricultural producers as defined in 46-15.3-4(2);

(2) “Commission” means the public utilities commission established by chapter 39-1;

(3) “Council” means the city council of any city and the town council of any town;

(4) “Municipal water supply” means a department, board, commission, authority, or agency of a city or town, which does not have a separate corporate existence from the city or town, that is a water supplier as defined in subdivision 46-15.3-5.1(a)(2);

(5) “Water resources board” means the water resources board established pursuant to chapter 46-15; and

(6) “Water supply systems management plan” means a water supply systems

management plan prepared in accordance with the requirements of sections 46-15.3-5.1 through 46-15.3-7, inclusive.

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45-39.1-3. Power of councils. -- In addition to and consistent with any power provided by a law or charter provision, councils shall have the power to:

(1) Plan, in a manner consistent with the provision of chapter 45-22.2, and provide for water supply or municipal water supply within the city or town or any portion or area thereof;

(2) Adopt, fix and amend rates as set forth by section 45-39.1-5, unless such rates are subject to the approval of the commission or are governed by another provision of law or charter;

(3) Control water usage within the city or town in order to provide for the adequacy, availability, and/or safety of water supply; and adopt such measures as may be necessary to make such restriction effective; such restrictions shall not be less than or inconsistent with any standards adopted by the water resources board and shall incorporate the priority given to agriculture pursuant to subdivision 46-15.7-1(b)(5); and

(4) Approve the submission, by the city or town, of a water supply system management plan to the water resources board pursuant to section 46-15.3-5.1.

45-39.1-4. Organization. -- Notwithstanding any provision of law, charter, or ordinance, to the contrary not later than July 1, 2010, each municipal water supply shall be organized, operated, and accounted for as an enterprise fund; provided, however, that the requirements of this section shall not be deemed to abrogate or impair any agreement, decision, rate, or order in effect on July 1, 2009.

45-39.1-5. Rates. -- (a) Adequacy. The rates of municipal water supplies shall be adequate to pay for all costs associated with the municipal water supply including, but not limited to, the costs of acquisition, treatment, transmission, distribution, and availability of water, and of system administration and overhead, including metering and billing, programs for the conservation and efficient use of water, including costs of developing, implementing, enforcing and evaluating such conservation programs and including conservation pricing as described in subsection (d), and the cost and/or value of any services or facilities provided by the city or town to the municipal water supply, testing, operation, maintenance, replacement, repair, debt service, and for sufficient operating reserves, revenue stabilization funds, debt service reserves and capital improvement/infrastructure replacement funds to implement water supply system management plans;

(b) Equitability. Except for service charges and other fixed fees and charges, rates:

(1) Shall be based on metered usage and fairly set among and within the classes and/or types of users;

(2) Shall provide that within any class of users the full costs of system capacity, administration, operation, and water supply costs for peak and/or seasonal use is borne by the users that contribute to such peak and/or seasonal use;

(3) May provide a basic residential use rate for water use that is designed to make a basic level of water use affordable, and

(4) May require implementation of demand management practices, consistent with the standards and guidelines of the water resources board, established pursuant to subsection 46-15.8(a), by wholesale and retail customers;

(c) Revenue stabilization. Municipal water suppliers shall in the absence of other sufficient funds available for similar purposes, establish as part of their next rate adjustment a revenue stabilization account to provide for adequacy during periods when revenues decline as a result of implementing water conservation programs, or due to circumstances beyond the reasonable control of the water supplier, including, but not limited to, the weather and drought. A revenue stabilization account shall accumulate a maximum of ten percent (10%) of the annual operating expenses of the supplier and shall be used to supplement other revenues so that the supplier's reasonable costs are compensated;

(d) Conservation. Municipal water suppliers shall take effective action to reduce waste of water and to reduce non-agricultural seasonal increases in the use of water, and may adopt

conservation pricing as part of a demand management program or otherwise revise their rates as a means to achieve their goals. For the purpose of encouraging conservation of water, suppliers are authorized to adopt increased rates based on quantity used either throughout the year or seasonally. Conservation pricing shall be designed to promote efficient water use, and to limit seasonal non-agricultural outdoor water use, and to the extent possible shall not increase prices for water users with no significant seasonal increase in water use. Revenues generated from the adoption of conservation rates shall be used to fund the revenue stabilization account established pursuant to subsection (c) above, operating reserves, debt service reserves or capital improvement/infrastructure replacement funds; and

(e) Billing. Billing shall be, at a minimum, quarterly by December 31, 2013.

SECTION 3. Title 46 of the General Laws entitled "WATERS AND NAVIGATION" is hereby amended by adding thereto the following chapter:

CHAPTER 15.8 **WATER USE AND EFFICIENCY ACT**

46-15.8-1. Short title. -- This act shall be known and may be cited as the "Water Use and Efficiency Act."

46-15.8-2. Legislative findings. – (a) The general assembly finds and declares that:

(1) Rhode Island is fortunate to have sufficient precipitation to meet Rhode Island's water needs, if that water is not wasted and if it is well and fairly managed. With scarcity of water a growing concern for many southern and western states, Rhode Island's adequate water supply can and should be an economic advantage for our state;

(2) Water is a renewable but a limited resource essential to the survival of all living things. The mission of the water supply profession is to provide a reliable supply of high quality water for the protection of public health, safety and welfare, and to ensure a sustainable balance between human and ecological water needs. Environmental stewardship and integrated water resource management, including land conservation, wetlands protection, and protecting the ecological integrity of water resources, are core values of the water supply profession and are essential to sustaining this mission;

(3) Efficient and equitable management of our shared water resources allows us to make water available to new economic development as well as meet existing water needs, both of which support our state's economic vitality and the quality of life of our communities;

(4) Good management allows us to provide water for necessary residential use as well as economic growth, at the same time that we preserve and protect the natural resources that make Rhode Island such an attractive place to live, and that support important economic activity that depends upon a healthy environment, such as fisheries, farming and tourism;

(5) Rhode Island is currently consuming large amounts of water for inefficient outdoor non-agricultural summer landscape irrigation.

(6) More efficient use of our shared water supply, especially by residential users, makes more water available for economic activity and for replenishment of stream flow, and is usually the most cost-effective and quickest way to maximize available water supply. Conservation must be a priority for successful water management.

(7) Rhode Island's water supply infrastructure must be maintained if it is to continue to supply the state with clean water sufficient to meet our needs; it is far cheaper to "pay as you go" than to defer infrastructure maintenance, which will result in it being far more expensive in the future.

(8) Municipalities should consider the water available for human use and likely water needs at build out in making planning decisions.

(9) The Rhode Island Water Resources Board, as an independent water supply agency, is vital to the success of this legislation and will provide necessary balance in working toward the sustainability of Rhode Island's water resources.

46-15.8-3. Purposes. -- The purposes of this act are: (a) To help assure reasonable,

needed and adequate future water supplies by:

- (1) Managing demand;
- (2) Reinvesting in water supply infrastructure and water supply resources; and
- (3) Protecting and preserving the health and ecological functioning of the water resources of the state.

(b) To strengthen water resources and supply planning by implementing, effectively and efficiently, water rates and water supply system management plans that are designed to achieve appropriate infrastructure reinvestment and demand management.

(c) To increase the efficient and effective administration of government responsibilities by establishing municipal water departments, boards, and authorities as self-sustaining enterprise funds.

46-15.8-4. Duties of water suppliers. -- All public drinking water supply systems that are subject to the requirements of section 46-15.3-5.1 shall have a duty:

(1) To manage demand to assure the long-term viability of water resources and water supply, to provide for strategic, prudent, reasonable and necessary use of water supplies, to control and/or curtail water use during periods of diminished water supply availability including droughts; to take such actions as may be necessary to achieve compliance by wholesale and retail customers with requirements for demand management; and

(2) To maintain fiscal integrity and adequate capacity by establishing and maintaining such revenue stabilization funds, operating reserves, debt service reserves, and infrastructure replacement and capital improvement program funds as are necessary; and to institute by December 31, 2013 billing at least as frequently as quarterly.

46-15.8-5. Duties of state agencies. -- In order to accomplish the purposes of this chapter:

(1) The water resources board shall establish and maintain no later than July 31, 2010 targets for non-agricultural demand management and water use, and for non-billed water which shall include the goal of reducing leakage to no more than ten percent (10%) of water supplies in public water supplies subject to the provisions of section 46-15.3-5.1;

(2) The statewide planning program shall incorporate, by July 1, 2011, such amendments as may be necessary into state guide plan elements to require:

(i) The use of water availability estimates developed by the water resources board and the department of environmental management and other relevant information sources in local comprehensive plan elements and the review of major land development and subdivision reviews;

(ii) The incorporation of the executive summaries of the water supply system management plans, as appropriate, into the services and facilities element and the land use element of local comprehensive plans;

(3) The public utilities commission shall assure, in accordance with provisions of chapter 39-15.1, that the rates of water suppliers subject to its jurisdiction are adequate to implement capital improvement plans, water supply system management plans, and demand management plans and to cover system costs when revenues decline as a result of decreased demand.

(4) State agencies need to become advocates for positive solutions by removing overlapping and burdensome planning and regulatory requirements.

SECTION 4. Section 46-13.1-7 of the General Laws in Chapter 46-13.1 entitled "Groundwater Protection" is hereby repealed.

46-13.1-7. Commission established. -- ~~(a) There is hereby created a commission to be known as the clean drinking water and groundwater standards commission and whose purpose it shall be to review the entire field of groundwater and drinking water quality standards.~~

~~(b) The commission shall be composed of one member of the house of representatives appointed by the speaker, one member of the senate appointed by the president of the senate, the director of the department of environmental management or his or her designee, the director of the department of health or his or her designee, the chairperson of the water resources board or his or her designee, seven (7) members of the academic community from local universities and~~

~~colleges appointed by the governor representing the fields of medicine, hydrogeology, toxicology, environmental engineering, plant and soil science economics, and epidemiology, and three (3) members of the business community affected by this legislation, one appointed by the speaker of the house, one appointed by the president of the senate, and one appointed by the governor.~~

~~(c) Forthwith, on June 26, 1986, the members of the commission shall meet at the call of the speaker of the house and organize. The speaker shall appoint a chairperson from among the members. The vice chairperson shall be elected by the membership of the commission on an annual basis. Vacancies shall be filled in like manner as the original appointment.~~

~~(d) The commission shall meet at least once annually and report its findings and recommendations to the general assembly annually on the second Wednesday of June.~~

SECTION 5. Section 46-15.1-1.1 of the General Laws in Chapter 46-15.1 entitled "Water Supply Facilities" is hereby repealed.

46-15.1-1.1. Definitions. -- ~~(a) "Large public water system" means a water supplier that pumps more than fifty million (50,000,000) gallons of water per year pursuant to section 46-15.3-5.1.~~

~~(b) "Small public water system" means a water supplier that pumps less than fifty million (50,000,000) gallons per year.~~

~~(c) "Large water user" means a water user that withdraws more than three million (3,000,000) gallons per year, which is equivalent to eight thousand two hundred (8,200) gallons per day.~~

~~(d) "Small water user" means a water user that withdraws less than three million (3,000,000) gallons per year, which is equivalent to eight thousand two hundred (8,200) gallons per day.~~

SECTION 6. Section 46-15.3-15 of the General Laws in Chapter 46-15.3 entitled "Public Drinking Water Supply System Protection" is hereby repealed.

46-15.3-15. Actions by the water resources board. -- ~~The water resources board shall review the evidence of implementation provided with each water supplier's thirty (30) month report and determine whether water supply system management plan implementation is sufficient to achieve the objectives of this chapter. Should the water resources board find that plan implementation is not sufficient to substantially achieve the objectives of this chapter, a determination of noncompliance shall be made.~~

SECTION 7. Sections 46-15.1-1, 46-15.1-2, 46-15.1-2.3 and 46-15.1-21 of the General Laws in Chapter 46-15.1 entitled "Water Supply Facilities" are hereby amended to read as follows:

46-15.1-1. Legislative declaration -- Water resources board (corporate) -- Applicable sections. -- The findings and declarations made by section 46-15-1 are hereby made applicable to this chapter.

The water resources board (corporate) under this chapter constitutes a body politic and corporate and a public instrumentality of the state having a distinct legal existence from the state and not constituting a department of state government.

The following sections also apply to the water resources board, the state agency: sections ~~46-15.1-1.1~~, 46-15.1-2(a), 46-15.1-2.2, 46-15.2-3, 46-15.1-2.4, 46-15.1-4.1, 46-15.1-5(15) -- (25), 46-15.1-20 and 46-15.1-21.

46-15.1-2. Board created -- Appointment of members. -- (a) There is hereby authorized, created and established a water resources board consisting of fifteen (15) members as follows:

(1) Eleven (11) members shall represent the public and shall be appointed by the governor with the advice and consent of the senate as herein provided;

(i) One of whom shall be a person who is actively engaged in the agricultural business,

preferably an owner and/or operator of an agricultural business, with respect to which appointment the governor shall give due consideration to the recommendation of the Rhode Island Agricultural Council established pursuant to the provisions of chapter 3 of title 2;

(ii) One of whom shall be a representative of a conservation organization, with respect to which appointment the governor shall give due consideration to the recommendation of the Environment Council of Rhode Island;

(iii) One of whom shall be a professional with expertise in ~~one or more of the following fields: geology; and/or hydrology; or engineering;~~

(iv) One of whom shall be a professional with expertise in engineering with relevance to water supply;

(v) One of whom shall be a professional with expertise in financial planning and/or investment;

(vi) One of whom shall be a professional with expertise in land and/or watershed management;

(vii) One of whom shall be a representative of a public water system that withdraws more than one hundred thousand (100,000) gallons per day, primarily from a surface water supply;

(viii) One of whom shall be a representative of a public water system ~~one of whom shall be a representative of a large water user; and~~ that withdraws more than one hundred thousand (100,000) gallons per day, primarily from a ground water supply;

(ix) ~~One of whom shall be a representative of a small water user; one of whom shall be a professional with expertise in financial planning and/or investment; and One of whom shall be a representative of a water user that withdraws more than one hundred thousand (100,000) gallons per day; and~~

(x) ~~Three (3) Two (2) of whom shall be members of the general public. The public members shall be chosen as far as is reasonably practicable to represent the drought regions of the state as specified in the Rhode Island Drought Management Plan.~~

(2) No person shall be eligible for appointment to the board unless he or she is a resident of this state. The remaining four (4) members are the director of environmental management, the director of the Rhode Island economic development corporation ~~who shall serve as a nonvoting ex-officio member;~~ the ~~chief~~ associate director of the division of planning within the department of administration ~~who shall serve as a nonvoting ex-officio member;~~ and the director of the department of health.

(3) Members shall serve until their successors are appointed and qualified and shall be eligible to succeed themselves. In the month of February in each year, the governor, with the advice and consent of the senate, shall appoint successors to the public members of the board whose terms shall expire in such year, to hold office commencing on the day they are qualified and until the first day of March in the third year after their respective appointments and until their respective successors are appointed and qualified.

(b) ~~(1) Those members of the board as of the effective date of this act [June 16, 2006] who were appointed to the board by members of the general assembly and the chairperson of the joint committee on water resources shall cease to be members of the board on the effective date of this act [June 16, 2006] and the governor shall thereupon appoint five (5) new public members pursuant to this section shall continue to serve until their term expires or they resign, whether or not they meet the criteria set out in subsection (a);~~

~~(i) One of whom shall be a professional with expertise in financial planning and/or investment;~~

~~(ii) One of whom shall be a professional with expertise in one or more of the following fields: geology; hydrology or engineering; and~~

~~(iii) One of whom shall be a representative of a conservation organization appointed by the governor as prescribed in this section;~~

~~(2) The member of the board selected by the Rhode Island Agricultural Council shall continue to serve the balance of his or her term. Upon expiration of his or her term, the governor shall appoint one member who is actively engaged in the agricultural business, preferably an owner and/or operator of an agricultural business as prescribed in this section. Those members of the board as of the effective date of this act [June 16, 2006] who were appointed to the board by~~

~~the governor shall continue to serve the balance of their current terms. Thereafter, the appointment shall be made by the governor as prescribed in this section.~~

(c) Any vacancy which may occur in the board for a public member shall be filled by the governor, with the advice and consent of the senate, for the remainder of the unexpired term in the ~~same manner as the members predecessor~~ as prescribed in ~~this (a) of this subsection~~ section. Each ex officio member of the board may designate a subordinate within his or her department to represent him or her at all meetings of the board.

(d) Members of the board shall be removable by the governor pursuant to section 36-1-7 of the general laws and for cause only, and removal solely for partisan or personal reasons unrelated to capacity or fitness for the office shall be unlawful.

(e) The water resources board is designated to carry out the provisions of this chapter. In exercising its powers under this chapter, the board constitutes a body politic and corporate and a public instrumentality of the state having a distinct legal existence from the state and not constituting a department of the state government. The board may take action under this chapter at any meeting of the board. A member of the board who is affiliated with a public water system in Rhode Island, as provided in section 46-15-2, shall not thereby be disqualified from acting as a member of the board on a transaction under this chapter with a public water system. Upon the enactment of this chapter, and annually in the month of March thereafter, the board shall choose a treasurer to act as such under this chapter. The treasurer need not be a member of the board or of its staff and shall serve until his or her successor is chosen and takes office, unless sooner removed by the board with or without cause. In the event of a vacancy in the office of treasurer, the board shall fill the vacancy for the unexpired term.

(f) Nothing contained herein shall be construed as terminating or discontinuing the existence of the water resources board as it exists prior to July 1, 1993 for purposes of chapters 15.1, 15.2, and 15.3 of this title, and the water resources board created hereby shall be and shall be deemed to be a continuation of the water resources board as it existed prior to July 1, 1993 for the purposes enumerated in chapters 15.1, 15.2, and 15.3 of this title. Nothing contained herein shall affect the bonding or financing authority of the water resources board as it exists prior to July 1, 1993 nor shall anything contained herein be construed as terminating, altering, discontinuing, or in any way impairing the bonding or financing power of the water resources board as it exists under chapters 15.1, 15.2, and 15.3 of this title prior to July 1, 1993.

46-15.1-2.3. Officers of the board -- Quorum and vote required for action. --

Forthwith, and upon the enactment of this chapter, and annually in the month of March, thereafter, the board shall elect one of its public members as chairperson, one of its public members as vice chairperson, and shall also elect a secretary either from its membership or its technical staff. The board may elect from among its members such other officers as it deems necessary. ~~Seven (7)~~ Nine (9) voting members of the board constitutes a quorum. A majority vote of those present and voting shall be required for action. No vacancy in the membership of the board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the board.

46-15.1-21. Annual report of water provider. -- Each water providing and water supply company both public and private doing business in this state shall forward an annual report to the ~~governor, speaker of the house of representatives, the president of the senate and secretary of state~~ water resources board setting forth the status of any water supply within the company's jurisdiction and control, and progress made towards achieving the goals of the entity's water supply management plan as prescribed in sections 46-15.3-5.1 and 46-15.3-7.

SECTION 8. Sections 46-15.3-4, 46-15.3-5.1, 46-15.3-7.5, 46-15.3-21 and 46-15.3-22 of the General Laws in Chapter 46-15.3 entitled "Public Drinking Water Supply System Protection" are hereby amended to read as follows:

46-15.3-4. Definitions. -- As used in this chapter, the following words and phrases shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells, springs, or surface water.

(2) "Commercial agricultural producers" means purveyors of at least two thousand five hundred dollars (\$2,500) of agricultural products during a calendar year.

(3) "Eligible expenditure" means the acquisition of a fee simple interest or of a conservation restriction, as that term is defined in section 34-39-2(a), or other interest in watershed lands, including, but not limited to, costs and expenses relating to the improvement of the lands or interests therein, maintenance of the lands or roads or interests therein, and taxes thereon, or the funding of the construction of physical improvements that directly protect the quality and safety of public drinking water supply. No funds under this section shall be used to extend service lines or expand system capacity.

(4) "Ground water" means water found underground which completely fills the open spaces between particles of sand, gravel, clay, silt, and consolidated rock fractures. The zone of materials filled with groundwater is called the zone of saturation.

(5) "Ground water recharge" means the processes of addition of water to the zone of saturation, that zone beneath the water table.

(6) "Raw water" means water in its natural state prior to any treatment.

(7) "Recharge area" means an area in which water is absorbed that eventually reaches the zone of saturation.

(8) "Sale" means all retail sales of potable water to end users for any purpose in the ordinary course of business by a supplier, except for sales exempt pursuant to section 46-15.3-5(c), (d) and (e).

(9) "Source" means the raw water upon which a public water supply system abounds, and refers to both groundwater and surface water.

(10) "Supplier(s) of public drinking water" and "supplier(s)" mean any city, town, district, or other municipal, quasi municipal, or public or private corporation or company engaged in the sale of potable water and the water supply business in Rhode Island; provided, however, that only suppliers which withdraw water from wells, reservoirs, springs, or other original sources in potable quality shall be entitled to disbursements pursuant to section 46-15.3-11.

(11) "The fund" means the water quality protection funds as described in section 46-15.3-10.

(12) "Watersheds" means those land areas which, because of their topography, soil type, and drainage patterns, act as collectors of raw waters which replenish or regorge existing or planned public drinking water supplies.

(13) "Non-billed water" means the difference between water produced by a supplier and water sold by the same supplier.

(14) "Leakage" means the difference between non-billed water and the total of the estimated or measured allowances for fire fighting, meter inaccuracy, theft, system usage, main flushing, sewer cleaning, storm drain cleaning, and other allowances that may be developed by the water resources board.

46-15.3-5.1. Water supply systems management plans. -- (a) All parties involved in the supply, transmission, and/or distribution of drinking water shall prepare, maintain, and carry out a water supply system management plan as described by this chapter. This requirement applies, without limitations, to:

(1) All municipalities subject to chapter 22.2 of title 45, the Comprehensive Planning and Land Use Regulation Act. ~~The water supply management plan shall be part of the Services and Facilities Element required by section 45-22.2-6(6)~~ executive summary of the water supply system management plan including the demand management goals and plans for water conservation and efficient use of water, of any water supplier providing service in any municipality, shall be incorporated in the services and facilities element of the plan for that municipality required by subdivision 45-22.2-6(6);

(2) All municipalities, municipal departments and agencies, districts, authorities or other entities engaged in or authorized to engage in the supply, treatment, transmission, or distribution of drinking water on a wholesale or retail basis, referred to herein as "water suppliers", which obtain, transport, purchase, or sell more than fifty million (50,000,000) gallons of water per year.

(b) A water supply system management plan shall be prepared in the format, and shall address each of the topics, listed in this section, to the extent that each is relevant to the municipality or water supplier, the water source(s), the water system(s), and the area served or eligible to be served. Notwithstanding any other provisions of this chapter, water supply management plans shall be in conformity with all applicable provisions of the Federal Safe Drinking Water Act [42 U.S.C. section 300f et seq.] chapter 13 of this title, Public Drinking Water Supply, and chapter 14 of this title, Contamination of Drinking Water, as administered by the department of health. Any other topic of interest may be included.

(c) A water supply system management plan shall include, without limitation, the following components:

(1) The water supply management component of the water supply system management plan shall include, without limitation:

(i) A statement of the goals that the plan is designed to achieve, including, but not limited to, goals for: ;

(A) Water resource protection;

(B) Demand management, which shall include goals as appropriate for managing peak and seasonal use of water; and

(C) Supply development as necessary and with consideration of source water availability; and

(D) System management, including system safety and reliability, infrastructure maintenance, repair, and reduction of leakage.

(ii) A description of the water system(s) covered, including sources of water, the service area, present and anticipated future users, and other important characteristics;

(iii) Data collection in a form that can be accepted directly into the Rhode Island Geographic Information System. ~~Monitoring of system operations shall be performed at intervals approved by the director of the department of environmental management in coordination with the office of strategic planning of the division of planning so as to evaluate all critical aspects of the system, compare performance with capabilities and expectations, and provide a basis for continuing water supply planning at the system, municipal, regional, and state levels;~~

(iv) Demand management measures that will achieve a high level of efficiency in the use of a limited resource, through the application of metering of one hundred percent (100%) of the water used; sanitary device retrofit; ~~technical assistance to and~~ performance of and compliance with water use audits for major industrial, commercial, institutional, ~~government, and governmental~~, agricultural and other outdoor water users; education and information; and use of appropriate fees, rates, and charges to influence use demand management measures shall include such restrictions on use; as may be necessary to meet or exceed targets for water use, including seasonal use, that are established by the water resources board; and the water resources board is hereby expressly directed and authorized to establish and maintain no later than July 31, 2010 by rule targets for water use and methods for achieving the targets, which shall as appropriate take into account differing conditions among watershed and water supply areas;

(v) System management measures to insure that the following elements are optimally operated and maintained, including: leak detection and repair; meter installation and replacement; and frequency of reading meters. Maintenance or reduction of ~~non-account water~~ leakage to stated goals shall be considered an essential component of system management;

(vi) Supply management measures to insure present and future availability of drinking water in adequate quantity and quality, including protection of the capacity and quality of drinking water sources; retaining water sources for standby or future use that are or can be improved to drinking water quality; reactivation of any water sources not in use; interconnection of systems for ongoing, standby, or emergency use; supply augmentation;

(vii) Emergency management, including risk assessment; responses to temporary or permanent loss of supplies due to natural or manmade causes; extraordinary treatment processes; interruptions in the delivery system; and contamination of water sources or delivery systems;

(viii) The water supply system management plans of water suppliers shall document that coordination has been accomplished with those plans of other suppliers in the vicinity and with operators of wastewater treatment and disposal facilities serving all or part of the same area or that a good faith effort to do so has been made. Plans shall be consistent with applicable local

comprehensive plans and shall be integrated into the water supply plans of the municipality or municipalities in which the service area is or is planned to be located. Conversely, the local comprehensive plans shall be consistent with water supply plans;

(ix) Water supply system management plans shall designate the person or organization responsible for taking each action, others who must participate, and the time period in which each action is to be taken. The capital, operating, and maintenance cost (if any) of each action shall be estimated and the anticipated source of funds shall be identified;

(x) Water suppliers subject to this chapter shall utilize methods to implement management measures necessary to achieve the findings, intent, and objectives of this chapter. The water supplier may be required to document the validity or effectiveness of any management measure, implementation method, or other provision or action included in its plan.

(2) The water quality protection component of the water supply system management plan shall include, without limitations, those items enumerated in section 46-15.3-7.

(3) The leak detection and repair component of the water supply system management plan shall include, without limitation:

(i) Methodology for leak detection;

(ii) Detailed program for the conducting of required repairs to the water supply system;

(iii) Impact assessment studies on the ability of the supplier to provide for peak demand services;

(iv) A priority list of actions for implementing these management measures;

(v) Every supplier of public water encompassed under this section shall conduct periodic leak detection consistent with stated goals for ~~non-account water~~ leakage, however no less frequently than once every ten (10) years.

46-15.3-7.5. Completion and filing of water supply system management plans. -- (a)

Each party required by this chapter to prepare and maintain a water supply system management plan shall complete and adopt an initial plan adhering to the schedule as previously approved by the water resources board.

(b) Municipalities and water suppliers subject to the requirements of section 46-15.3-5.1 of this chapter shall file a copy of all plans and amendments thereto with the water resources board. The plans shall be treated as confidential documents.

(c) The water resources board shall establish procedures that permit parties that review the plans under rules adopted by the water resources board to obtain sensitive information essential to performance of their reviews, including minimum measures necessary to transmit, use, store, and maintain such sensitive information under conditions that insure its security to the maximum possible. These procedures may include designation of those persons within each reviewing agency authorized to use or inspect sensitive information, and exclusion of all others.

An executive summary containing an:

(1) Introduction;

(2) Background;

(3) A general system description containing:

(i) Water supply sources;

(ii) Water treatment facilities;

(iii) Storage facilities;

(iv) Pumping stations;

(v) Raw water and finished water transmission facilities;

(vi) Distribution facilities including low to high service;

(vii) Planned extensions;

(viii) Interconnections;

(ix) Populations served and projections;

(x) Major users;

(xi) Metering;

(xii) Legal agreements;

(xiii) ~~Non-account water~~ Leakage;

(xiv) Demand management;

(xv) Supply management;

- (xvi) Available water;
- (xvii) Safe yield;
- (xviii) Anticipated future demands;
- (xix) Capital improvement;
- (xx) Rate structure;
- (xxi) Financial management;
- (xxii) Emergency management;
- (xxiii) Water supply source protection; and
- (xxiv) General policies shall be developed.

(4) This summary shall be distributed as the public document. The water resources board shall be authorized to recover and secure water supply management plans and water supply system management plans previously distributed to other than water resources board and designated review agencies and replaced by executive summaries as provided herein.

(d) Municipalities and water suppliers subject to section 46-15.3-5.1 shall review their plans at least once every five (5) years, and shall amend or replace their plan ~~so as~~ as may be necessary to remain current.

~~(c) Additionally, on a thirty (30) month basis, each supplier shall report to the water resources board on the status of their plan implementation and shall provide the following information: metered source production; wholesale water sales and purchases; gross retail water sales; retail water sales by customer category beginning no later than first scheduled five (5) year plan update; calculation of non-account water; and number of customers served.~~

~~(f)~~(e) A municipality or water supplier subject to section 46-15.3-5.1 of this chapter may request, in writing, that the water resources board extend the time in which to complete and submit filings required by this chapter, not to exceed one year. A request shall be approved only upon demonstration that an extension is justified by extraordinary circumstances beyond the control of the municipality or water supplier. An extension, if approved, shall not waive any of the requirements of section 46-15.3-7.6. This provision does not apply to the section on emergency management. Should a municipality or water supplier fail to submit a filing as provided herein, a determination of non-compliance shall be made by the water resources board.

46-15.3-21. Fees, rates and charges. -- (a) The fees, rates, and charges for drinking water are a mandatory component of water supply system management.

(b) The following factors shall be considered in setting fees, rates, and charges:

(1) Recovery of all capital and operating costs, fixed and variable of production, conservation, use, management, protection, obtaining, development, procuring, and/or transporting water, and its sale at wholesale or retail;

(2) Marginal cost pricing;

(3) Emergency and drought period surcharges;

(4) Seasonal price structures;

(5) Difference in costs based upon different points of delivery;

(6) The effect of fees, rates, and charges on use of water and, where applicable, on wastewater costs and charges;

(7) The effect of reducing ~~non-account water~~ leakage to levels consistent with stated goals;

(8) Preparing, maintaining and implementing water supply system management programs; and

(9) Notwithstanding any other provisions of law, the Providence water supply board shall transfer to the general fund of the city of Providence an amount equal to five percent (5%) per annum times the annual gross revenues of the Providence water supply board for the fiscal year ending June 30, 2004, and for the next two (2) succeeding fiscal years. This transfer shall not be included as part of the Providence water supply board's rates approved by a final unappealable order of the public utilities commission for the same three (3) fiscal years.

(c) Notwithstanding the provisions of sections 39-2-2 and 39-2-5, all rates and charges made by water suppliers which decline as quantity used increased are hereby declared to be no longer conducive to sound water supply system management designed to properly conserve, develop, utilize, and protect this finite natural resource. The public utilities commission may

order rates for suppliers of water which either do not vary with quantities used or when there is evidence of increasing costs to either the utility or to society, rates which increase as the quantity used increases. If the commission finds that changing rates to comply with this section will cause a hardship to a class of customers, the commission may order that rates for that class of customers be changed to comply with this section over a period of time not to exceed five (5) years.

(d) Notwithstanding the provisions of sections 39-2-2 and 39-2-5, the public utilities commission may order a reduction in rates consistent with the amount by which a supplier exceeds the stated goals for ~~non-account water~~. ~~"Non-account water" shall be defined as the difference between the metered supply and the metered consumption for a specific period including an allowance for firefighting. No estimates for non-metered usage, except for the firefighting allowance, shall be included in the calculation of accounted for water leakage.~~

46-15.3-22. Billing and collection of fees, rates, and charges. -- (a) Financial support of water supply and provision of timely and accurate information on costs to users are mandatory components of water supply system management.

(b) ~~Bills shall be rendered on a regular schedule for metered usage in the immediately preceding time period. Water~~ All water suppliers ~~selling water to other water suppliers or at retail~~ shall meter all water delivered and shall maintain and replace meters in accordance with their management plans. Water suppliers shall formulate and carry out a program for installation of ~~remote reading or automatic~~ radio frequency reading systems. These programs shall be ~~carried out~~ initiated not later than ~~July 1, 1996~~ December 31, 2012.

(c) Water suppliers shall ~~develop programs for recording~~ record metered usage and billing ~~bill~~ thereafter, at an interval less than one year as ~~determined appropriate, not later than July 1, 2001. Alternatively, water suppliers must demonstrate that annual meter reading and billing is consistent with the purposes of this chapter~~ quarterly or more frequently by December 31, 2013.

~~(d) Unless the water supplier already engages in joint billing activities, a water supplier selling water at retail shall conduct feasibility studies of joint billing for water supply and wastewater treatment and disposal in cooperation with all parties responsible for the latter service within the same water supply service area. The water supplier shall evaluate arrangements with municipalities and wastewater treatment and disposal agencies for operation of a combined billing system, including equitable sharing of costs.~~

SECTION 9. Sections 46-15.6-5, 46-15.6-6 and 46-15.6-7 of the General Laws in Chapter 46-15.6 entitled "Clean Water Infrastructure" are hereby amended to read as follows:

46-15.6-5. Completion, filing, approval and implementation of infrastructure component. -- (a) Each water supplier required by this chapter to prepare and maintain an infrastructure replacement component shall complete and adopt a component two (2) years subsequent to the date each party's water supply management plan per section 46-15.3-7.5 is due.

(b) Water suppliers subject to the requirements of section 46-15.6-3 shall file a copy of all components, only to the extent the components differ from plans filed under section 46-15.3-5.1 thereto with the following: the division of drinking water quality of the department of health (hereinafter referred to as "the department").

(c) A water supplier subject to section 46-15.6-3 shall review their components at least once every five (5) years and shall modify or replace their components as necessary.

(d) The department shall coordinate expeditious review of components prepared by water suppliers subject to this chapter. Upon receipt of components prepared by water suppliers under this chapter, ~~the department of environmental management's water supply management division, or its successor~~ water resources board, and the division of public utilities and carriers (for those water suppliers within their jurisdiction) shall have one hundred and twenty (120) days to review the components and submit comments thereon to the department. Upon consideration of written comments by all agencies designated herein the department shall determine whether the component complies with the requirements of this chapter. This determination shall be made within eight (8) months of the initial submission. A thirty (30) day public comment period shall be included in this eight (8) month review period. Failure by the department to notify water

suppliers of its determination within the prescribed time limit shall constitute approval.

(e) Each water supplier shall implement the requirements of its infrastructure replacement program and component, including its infrastructure replacement fund, as mandated by this chapter in accordance to rules and regulations promulgated per section 46-15.6-7.

46-15.6-6. Financing infrastructure replacement. -- The cost of infrastructure replacement programs and indemnification as required by this chapter shall be financed as follows:

(1) The cost of programs to implement infrastructure replacement shall be paid by the water users ~~at a rate directly proportionate to the users' water consumption.~~ The charges shall be limited to those necessary and reasonable to undertake the actions required by this chapter. These charges shall be based upon the annual funding requirements of the facility improvements necessitated over each successive twenty (20) year period. Interest earned on money in this infrastructure replacement fund shall be credited to this infrastructure replacement fund.

(2) Each water supplier designated in section 46-15.6-3 shall establish a special account designated as the infrastructure replacement fund to be held as a restricted receipt account and to be administered by the water supplier solely to implement and carry out the replacement of infrastructure as required by this chapter.

(3) Any money which may accumulate in the infrastructure replacement fund in excess of that needed to implement the annual infrastructure replacement program or in excess of that exclusively pledged to repayment of outstanding bonds or notes or loan repayments to implement the infrastructure replacement program shall revert to the rate payers of that particular system on a biannual basis.

(4) Each water supplier designated in section 46-15.6-3 may, as a complete or partial alternative to direct funding of its infrastructure replacement program, finance its infrastructure replacement program through bonding. The annual debt service of each bond or bonds shall be applied and credited towards the annual requirement of the infrastructure replacement program's annual funding requirements.

(5) The Rhode Island public utilities commission, as to water suppliers within its jurisdiction, shall permit an increase for just and reasonable infrastructure replacement in the portion of the water suppliers' rate structure to comply with this chapter and shall allow the water supplier to add this required funding to its rate base in accordance with this chapter.

46-15.6-7. Rules governing content of programs, components, review, evaluation, funding, and implementation. -- The department with the concurrence of the ~~department of environmental management's water supply management division or its successor~~ water resource board, and the Rhode Island public utilities commission, as to water suppliers within its jurisdiction, shall forthwith promulgate rules and regulations for the review of components as pertains to financial forecasts of facility replacement, improvement requirements and fiscal controls and accounting depreciation standards per section 46-15.6-4(a)(1) and (a)(2). The department with the concurrence of ~~the department of environmental management's water supply management division or its successor~~ water resource board, and the Rhode Island public utilities commission, as to water suppliers within its jurisdiction, shall promulgate the criteria or standards which it will use to evaluate the implementation of approved components, programs and funding mechanisms.

SECTION 10. This act shall take effect upon passage.

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